SUPREME COURT, U. S.

JAN 3 1974

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1040

DISTRICT OF COLUMBIA, *et al.*,
Petitioners.

v.

MICHAEL H. MARSH,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on October 5, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported and is set forth in Appendix A at pages 1 through 7a. The order of the District Court is set forth in Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered on October 5, 1973. Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED

1. Whether, in an action for damages against District of Columbia police officers, an exercise of federal question jurisdiction pursuant to 28 U. S. C. § 1331(a) justifies the invocation of the doctrine of pendent jurisdiction against the District of Columbia, its police chief, and other police superiors.

2. Whether, in light of the unique status of the District of Columbia which makes it constitutionally distinct from the States, the Court of Appeals erroneously construed 28 U. S. C. § 1331(a) as conferring federal question jurisdiction in an action to redress alleged violations of civil rights by District of Columbia police officers acting in a purely local capacity.

STATUTE INVOLVED

Act of March 3, 1875, 18 Stat. 470, § 1, as amended, 28 U. S. C. § 1331(a), **Federal question; amount in controversy; costs:**

> "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

STATEMENT

In a civil action filed in the United States District Court for the District of Columbia on February 18, 1971, respondent sought to recover damages for an alleged assault and battery and an assertedly unlawful arrest and detention. Named as defendants were the District of Columbia (hereinafter "the District"), its Metropolitan Police Chief, three other police superiors (John Doe #2, #3, and #5), and three subordinate Metropolitan police officers.

In his complaint, respondent invoked the District Court's jurisdiction under 42 U. S. C. §§ 1983 and 1985 (Appendix C at 13a). He alleged that on February 19, 1970, while watching an antiwar demonstration in the lobby of his dormitory at George Washington University he was assaulted by petitioner Hollingsworth and an unnamed fellow Metropolitan Police officer (John Doe #1), and that he was thereafter unlawfully arrested by petitioners Hollingsworth, Heane, and John Doe #1 (Appendix A at 5, Appendix C at 14a-16a). Respondent further alleged that the District, the Metropolitan Police Chief, and police superiors John Doe #2 and #3 failed in their duty to train, instruct and supervise the arresting and assaulting officers, failed to prevent the occurrence of the assault and arrest, and conspired with the arresting and assaulting officers to deprive him of his constitutional rights (Appendix C at 17a). Respondent went on to allege that he was thereafter booked and processed by John Doe #4 in a manner which caused him to be falsely imprisoned and unlawfully detained, in violation of his constitutional rights; that such action resulted from the failure of the booking officer's superior (John Doe #5), the Metropolitan Police Chief, and the District to properly train, instruct, supervise and control John Doe # 4, and was attributable to a conspiracy among these defendants (Appendix C at 17a-18a).

In their answers to the complaint, the District, the Metropolitan Police Chief, and petitioners Hollingsworth and Heane denied the wrongdoing attributed to them and pretrial discovery proceedings were subsequently commenced. Prior to the completion of pretrial discovery proceedings, this Court, on January 10, 1973, held in *District of Columbia* v. *Carter*, 409 U. S. 418, that the District of Columbia was not a state or territory within the meaning of 42 U. S. C. § 1983 and hence not amenable to the District Court's jurisdiction there-

under, as respondent had asserted in his complaint. In light of *Carter*, petitioners requested the District Court to certify the case to the District of Columbia Superior Court pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 473 et seq., hereinafter "the Court Reform Act"). See D. C. Code, 1973, § 11-922(b) (Appendix D, *infra*). Respondent opposed the motion claiming that, notwithstanding *Carter*, the District Court had an independent basis for exercising jurisdiction pursuant to 28 U. S. C. § 1331(a) (Appendix E, *infra*). On April 26, 1973, the District Court certified the case to the District of Columbia Superior Court (Appendix B, *infra*). On October 5, 1973, the United States Court of Appeals for the District of Columbia Circuit summarily reversed the certification order, concluding that the District Court had jurisdiction over the assaulting and arresting officers under 28 U. S. C. § 1331(a), and, on such a basis, ruled that, under the doctrine of pendent jurisdiction, the District Court could entertain respondent's claims against the District, the Metropolitan Police Chief, and the various police superiors (Appendix A at 7).

REASONS FOR GRANTING THE WRIT

1. In concluding that, under the doctrine of pendent jurisdiction, the District Court may entertain respondent's action against the District of Columbia, the Metropolitan Police Chief, and the other police superiors, the Court of Appeals resolved an issue which, under this Court's recent decision and express pronouncement in *Moor* v. *County of Alameda*, 411 U. S. 693, 715 (1973), partakes of the magnitude and importance sufficient to warrant the exercise of this Court's certiorari jurisdiction. In *Moor*, a municipality and its subordinate officers were sued in a federal court under 42 U. S. C. § 1983 and § 1985 and a vicarious liability theory asserted as to the municipality. This Court, consistent with its previous

decision in *Monroe* v. *Pape*, 365 U. S. 167 (1961), held that there was no basis for the exercise of federal jurisdiction over the municipality under the 1871 Ku Klux Klan Act invoked by the petitioner (411 U. S. at 698-710) and went on to discuss petitioner's additional contention that, given the amenability of the individual defendants to federal jurisdiction under the 1871 Act, the claim against the municipality could be federally entertained under the doctrine of pendent jurisdiction (id. at 710-715). In so doing, this Court noted a split of lower federal Court authority on the question of the existence of pendent jurisdiction (id. at 713-715) and specifically stated that: "Whether there exists judicial power to hear the state law claims against the County is, in short, a subtle and complex question with far-reaching implications." (Id. at 715). This Court refused to resolve the question only because "the District Court [with the agreement of the Court of Appeals], in the exercise of its legitimate discretion, properly declined to join the claims against the County * * *" (id. at 715; cf. 458 F. 2d 1217, at 1221).

Here, unlike in *Moor*, the pendent jurisdiction question is indeed ripe for resolution by this Court. Under this Court's decision in *District of Columbia* v. *Carter*, 409 U. S. 418 (1973), respondent's claims under 42 U.S.C. §§ 1983 and 1985 as to all of petitioners could not be entertained by the District Court, as the Court of Appeals plainly recognized (Appendix A at 2a-3a). However, the Court of Appeals noted, consistent with this Court's dictum in *Carter* (409 U. S. at 432-433), that respondent alleged a sufficient constitutionally oriented tort action against the arresting officers under 28 U.S.C. § 1331(a) (but see discussion, *infra*). Proceeding from that premise, the Court of Appeals went on to direct the District Court to permit invocation of the doctrine of pendent jurisdiction as to the "superior police officers and the District of Columbia" (Appendix A at 7a and, in so doing,

unmistakably provided ample basis for this Court's resolution of the "subtle and complex [pendent jurisdiction] question with far-reaching implications" which the Court found unnecessary to resolve in *Moor* (411 U. S. at 715).

The question takes on added importance here because, unlike in *Moor*, we are not concerned with the jurisdiction of the federal judicial system *vis-a-vis* that of a state. This case, in contrast, involves two federally created judicial systems. In a more specific context it involves the system of courts recently created by the Court Reform Act and charged by Congress with the responsibility of deciding all controversies of a local nature—controversies which had theretofore created "a crises in the judicial system of the District of Columbia" because the District Court's "case loads had become unmanageable * * *." See *Palmore* v. *United States*, 411 U. S. 389, 408-409 (1973).[1] Such a legislative and historical background should surely be considered in light of this Court's pronouncement in *Moor* that the jurisdiction of federal courts, including pendent jurisdiction, is "* * * subject, within the limits of the Constitution, to the will of Congress, not the courts." 411 U.S. at 715. Clearly, therefore, given the overriding significance of the express "will of Congress" reflected in the Court Reform Act concerning jurisdiction over controversies of a local nature—see *Preiser* v. *Rodriquez*, 411 U. S. 475, 493, n. 10 (1973) —the conclusion that the pendent jurisdiction ruling of the Court of Appeals is sufficiently important to warrant this Court's review is inescapable.

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[1] The pendent jurisdiction holding of the Court of Appeals extends to respondent's claims as to the District, the Metropolitan Police Chief and three other police superiors and, as such, plainly requires that the District Court take cognizance of an action in which nonfederal aspects are significantly predominate, contrary to the basic purpose of the Court Reform Act which manifestly was to require that matters of this kind be litigated in the District of Columbia Superior Court.

2. Apart from pendent jurisdiction considerations, the ruling of the Court of Appeals presents the more basic question of whether 28 U. S. C. § 1331(a) was ever intended to vest federal question jurisdiction in the United States District Court for the District of Columbia where, as here, an alleged violation of civil rights is attributed to District of Columbia officers acting in a purely local capacity.

As this Court recently observed in *District of Columbia* v. *Carter*, *supra*, 409 U. S. at 427-428, n. 20, § 1331(a) had its genesis in Section 1 of the Act of March 3, 1875, 18 Stat. 470 (hereinafter "the 1875 Act"). That Act was entitled "an Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts and for other purposes." It dealt essentially with three types of federal jurisdiction: diversity of citizenship jurisdiction, federal removal jurisdiction, and federal question jurisdiction. It is significant, however, that the Act's diversity provision (18 Stat. 470, § 1) was then insufficient to confer federal jurisdiction in an action in which one of the two parties was a citizen of the District of Columbia as opposed to a State. See *Barney* v. *Baltimore City*, 73 U. S. (6 Wall.) 280, 287 (1867); *Cameron* v. *Hodges*, 127 U. S. 322 (1888). Federal jurisdiction in an action of this kind simply could not be invoked until Congress specifically legislated (Act of April 20, 1940, 54 Stat. 143) with respect to the District in a diversity context. It is likewise significant that the extensive removal provisions of the 1875 Act (18 Stat. 470-472, §§ 2 through 7) were obviously inapplicable to the courts of the District of Columbia as opposed to state courts. A review of this background in light of historical factors will demonstrate that there exists a question of overriding importance as to whether the 1875 Act's federal question provision is similarly inapplicable where, as here, that pro-

vision is invoked as a basis for federal jurisdiction in connection with a purely local civil rights matter.

Acting pursuant to Article I, Section 8, Clause 17, of the Constitution, Congress has traditionally provided District residents with a judicial system designed to redress grievances arising in a local context, whether or not of constitutional dimension. *O'Donoghue* v. *United States*, 289 U. S. 516, 545-548 (1933); *District of Columbia* v. *Carter*, *supra*, 409 U. S. at 429-430. As early as 1801 "the jurisdiction of the courts of the District of Columbia was made more extensive than that of any other court in the country, it being * * * [that of] a local and Federal court, situated at the seat of Government." See Noel, *The Court House of the District of Columbia*, Law Reporter Printing Co., Washington, 1939, at 49-53. See also 2 Stat. 103, 105-106. The historical availability of a congressionally created court to a resident of a state as a forum to redress a constitutionally oriented grievance was quite a different matter. Until 1875, Congress refrained from providing the lower federal courts with general federal question jurisdiction, and relied on the state courts to vindicate essential rights arising under the Constitution and federal laws. See *Palmore* v. *United States*, 411 U. S. 389, 401 (1973); *Zwickler* v. *Koota*, 389 U. S. 241, 245 (1968).

As a post-Civil War measure, the 1875 Act was enacted for the purpose of "providing an impartial forum for the consideration of those federal question cases which might be subject to bias in the state courts." See Bergman, *Reappraisal of Federal Question Jurisdiction*, 46 Mich. L. Rev. 17, 29-30 (1947). Unlike those Acts of Congress which previously and subsequently conferred judicial power for the adjudication of local disputes under Article I, Section 8, Clause 17, of the Constitution, the 1875 Act derived from Article III, Section 2, Clause 1, of the Constitution. See *Romero* v. *International Term.*

Co., 358 U. S. 354, 363-364, 366-367 (1959); *Lynch* v. *Household Finance Corp.*, 405 U. S. 538, 548 (1972). As an Article III-oriented measure, the 1875 Act was necessarily designed to deal with "affairs of national concern" as opposed to matters of local concern "warranting distinctive treatment" by Congress under Article I, Section 8, Clause 17. *Palmore* v. *United States*, *supra*, 411 U. S. at 408. Indeed, at the time Article III itself was drafted, "[t]here is no evidence that the Founders, pressed by more general and immediate anxieties, thought of the special problems of the District of Columbia in connection with the judiciary. This is not strange, for the District was then only a contemplated entity. * * *" *National Ins. Co.* v. *Tidewater Co.*, 337 U. S. 582, 587 (1949). And "neither the aim of the Act of 1875 to provide a forum for the vindication of new federally created rights, nor the pressures which led to its enactment, suggest, even remotely, the inclusion of * * * [locally oriented constitutional claims] within the scope of that statute"—claims which throughout previous years local courts of congressional creation "had been completely adequate to the task" of resolving through the exercise of Article I jurisdiction. Cf. *Romero* v. *International Term. Co.*, *supra*, 358 U. S. at 368-369.

Quite recently, in *Lynch* v. *Household Finance Corp.*, *supra*, this Court observed that, although there was very little discussion of the 1875 Act before its enactment, in contrast to the extensive congressional debate that attended the passage of the 1871 Act construed in *Carter*, *supra*, the considerations attending the enactment of the 1875 Act were similar to those attending the enactment of the 1871 Act (405 U. S. at 548). In that connection, the Court specifically noted that the 1875 Act was "like the Act of 1871, an expansion of national authority over matters that, before the Civil War, had been left to the States," and, as such, "'clearly * * * part of, rather than an exception to, the trend of legislation which pre-

ceded it'" (id.). The Court additionally pointed out that the 1875 Act was "'originally introduced in the House of Representatives in the form of a bill to amend the removal statute'" (which as previously noted could have had no applicability to the courts of the District of Columbia as opposed to state courts) and that "the passage of the Act, despite the lack of debate, has been regarded as the 'culmination of a movement * * * to strengthen the Federal Government against the states'" (id. at n. 14).

In *District of Columbia* v. *Carter*, *supra*, this Court, in pointing out that similar considerations of federalism gave rise to the enactment of the 1871 Act, specifically noted that, in approving that measure, the Reconstruction Congress recognized the need for original federal court jurisdiction as a means to provide federal control over the "unconstitutional actions of state officials" (409 U. S. at 428). The Court went on to make clear, however, that historical considerations of this kind are wholly at variance with the notion that Congress intended the federal jurisdiction provisions of the 1871 Act to apply in cases involving the unconstitutional actions of the District and its officials, stating (409 U. S. at 429) that:

> "There was no need, however, to create federal court jurisdiction for the District of Columbia. Even prior to 1871, the courts of the District possessed general jurisdiction over both federal and local matters. Act of Mar. 3, 1863, c. 91, 12 Stat. 762. Thus, *the jurisdictional aspects of § 1 of the 1871 Act were entirely superfluous with respect to the District. Moreover, while Congress was unable to exert any direct control over the actions of state officials, it was authorized under Art. I, § 8, cl. 17, of the Constitution to exercise plenary power over the District of Columbia and its officers.* * * *" (Emphasis added.)

In light of these considerations, it becomes apparent that there is a highly important question as to whether

Congress similarly viewed the federal question jurisdictional aspects of § 1 of the 1875 Act as "entirely superfluous with respect to the District" and intended that purely local controversies, such as that involved here, be resolved exclusively by the local judiciary under local jurisdiction-conferring statutes such as the Court Reform Act,[2] instead of by the federal courts of the District of Columbia under the 1875 Act. Or as this Court said in *Romero* v. *International Term. Co., supra*, 358 U. S. at 379:

> "* * * The Act of 1875 is broadly phrased, but it has been continuously construed and limited in the light of the history that produced it, the demands of reason and coherence, and the dictates of sound judicial policy which have emerged from the Act's function as a provision in the mosaic of federal judiciary legislation. It is a statute, not a Constitution, we are expounding.
>
> "The considerations of history and policy which investigation has illuminated are powerfully reinforced by *the deeply felt and traditional reluctance of this Court to expand the jurisdiction of the federal courts through a broad reading of jurisdictional statutes.* * * *" (Footnote omitted; emphasis added.)

To be sure, whether the Court of Appeals has unreasonably expanded federal jurisdiction through "a broad reading of" the 1875 Act and improperly taken cognizance of a purely local civil rights dispute which the local judiciary is fully equipped to resolve under the Court Reform Act is a truly substantial question which this Court should settle with finality.

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[2] Congress indeed recognized as much in the Court Reform Act itself when it provided in that Act that "for purposes of" Chapter 85 of Section 28 of the United States Code, which contains § 1331 (a), "references to laws of the United States or Acts of Congress do not include laws applicable exclusively to the District of Columbia." See 84 Stat. 590, 28 U.S.C. § 1363.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the holding of the Court of Appeals raises a pendent jurisdiction question of recognized importance under this Court's clear pronouncements in *Moor* v. *County of Alameda*, 411 U. S. 693, 715 (1973), and presents an equally important question under the recently enacted District of Columbia Court Reform Act. In addition, the court's holding presents a substantial question concerning the amenability to federal question jurisdiction under 28 U. S. C. § 1331(a) of District of Columbia officers acting in a local capacity under locally applicable laws. To the end that these important questions be promptly settled with finality, the petition for a writ of certiorari should be granted.

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APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1279

DAVID LEE DEN HARTIGH,
Appellant
v.

JOHN LATIN, JR., ET AL.

No. 73-1740

MICHAEL H. MARSH,
Appellant
v.

WALTER W. HOLLINGSWORTH, ET AL.

On Appellant's Motion for Summary Reversal

Decided October 5, 1973

Alan Dranitzke was on the Motion for Summary Reversal in No. 73-1279.

John E. Vanderstar was on the Motion for Summary Reversal in No. 73-1740.

C. Francis Murphy, Corporation Counsel, *Richard Barton* and *David P. Sutton*, Assistant Corporation Counsel were on the opposition for appellee.

Before: BAZELON, *Chief Judge* and LEVENTHAL, *Circuit Judge.*

PER CURIAM: These cases both arise from complaints alleging excessive use of force and other violations of constitutional rights by named officers of the Metropolitan Police Department, their immediate supervisors, and the District of Columbia. Both cases were certified to the Superior Court of the District of Columbia, and it is from such transfers that these appeals are taken.

Because of the importance of the questions raised by these appeals, and the policy of the District Court which they reveal, we have thought it important to set forth the reasons for granting appellants' motions for summary reversal of those transfers.

Appellants asserted that jurisdiction over their claims below arose under both the Constitution and the Civil Rights Acts of the United States, in particular 42 U.S.C. §§ 1983 and 1985. Both appellants also asserted that the amount in controversy exceeded $10,000.

In *District of Columbia v. Carter*,[1] the Supreme Court held that 42 U.S.C. § 1983 does not apply to suits for damages arising under "color of law" of the District of Columbia, since the District of Columbia is not a "State or Territory" within the meaning of the statute. The District Court in both cases based the transfer of the actions to the Superior Court on the *Carter* decision.[2]

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[1] 409 U.S. 418 (1973).

[2] In No. 73-1279, the court below stated:

> In light of the *Carter* case, this will be certified to the Superior Court.
>
> . . . .
>
> This does not require a motion. That was the decision of the Judges of this Court, that these cases would be certified to the Superior Court.

In No. 73-1740, the court based its order on both the *Carter* de-

We believe that extension of the *Carter* case to be erroneous.

Jurisdiction below was also asserted in both cases on the basis of 28 U.S.C. § 1331(a) which provides:

> The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

The Supreme Court has held that under this provision the district courts have jurisdiction over disputes which involve alleged infringements of constitutional liberties by federal officers. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 395-96 (1971); *Bell v. Hood*, 327 U.S. 678, 685 (1946). Moreover, for the purpose of determining jurisdiction, such allegations are not to be interpreted harshly against the plaintiff:

> Before deciding that there is no jurisdiction, the District Court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. . . . [W]here the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court but for two possible exceptions . . . must entertain the suit. . . .
>
> . . . The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction where the alleged [federal question] . . . appears to be immaterial . . . or . . . wholly insubstantial and frivolous.[3]

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cision and a finding that the action would not justify a judgment of more than $10,000.

[3] *Bell v. Hood, supra*, at 681-83.

In two recent cases, this court has found jurisdiction under 28 U.S.C. § 1331(a) over alleged police misconduct in depriving citizens of rights secured to them by the Fourth and Fifth Amendments. In *Sullivan v. Murphy*, this court specifically found that jurisdiction to consider equitable relief from police misconduct in the District of Columbia under § 1331(a) survives the *Carter* finding that such jurisdiction cannot be maintained under 42 U.S.C. § 1983.[4] In *Gomez v. Murphy*, where the appellant sought equitable relief against enforcement of the District of Columbia vagrancy statute on the grounds that it infringed his rights under the Fourth and Fifth Amendments, this court held that the controversy was one properly within the "federal question" jurisdiction of the court.[5]

However, the test for jurisdiction under § 1331(a) is both the existence of a federal question and determination of an amount in controversy of more than ten thousand dollars. When the amount claimed to be in controversy is asserted for jurisdictional purposes, the plaintiff's allegation is to be accepted unless "it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or . . . that the plaintiff never was entitled to recover that amount." *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938); *Gomez v. Wilson, supra; Spock v. David*, 469 F. 2d 1047, 1052 (3d Cir. 1972); *Gillentine v. McKeand*, 426 F. 2d 717, 720 (1st Cir. 1970); *Arnold v. Troccoli*, 344 F. 2d 842, 845 (2d Cir. 1965). Upon the record before us in these cases, we cannot find, to a legal certainty, that no recovery could satisfy the statutory standard in the cases before us.

Appellant Marsh alleged that on February 20, 1970, while he was standing in the lobby of his dormitory at

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[4] —— U.S. App. D.C. ——, 478 F.2d 938, 960 (1973).

[5] —— U.S. App. D.C. ——, 477 F.2d 411, 419 (1973).

George Washington University watching an antiwar demonstration, two police officers assaulted him and arrested him. Subsequently, they again beat him, took him to the local police station and booked him, and incarcerated him for approximately nine hours. His complaint below sought $10,000 in compensatory damages for physical injuries, mental anguish and medical bills. He also sought compensation for actual and prospective loss of earnings due to his injuries.

Plaintiff Marsh's allegations for the compensatory damages alone would seem to meet the statutory requirement. He submitted below an affidavit of medical bills totalling over $900, and computed lost compensation for summer work as $530. At the time of the alleged beating, he was a law student at George Washington University and he alleges that he will lose future earnings as a lawyer because of the effects of the beating. Plaintiff also sought $25,000 in punitive damages. It is clear that punitive damages should be considered in determining the jurisdictional amount in controversy. *Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 240 (1943); *Barry v. Edmunds*, 116 U.S. 550, 562 (1886); *Davis v. Peerless Insurance Co.*, 103 U.S. App. D.C. 125, 129, 255 F.2d 534, 538 (1958). Finally, there is no record below that supports a finding of lack of good faith in alleging the jurisdictional amount. *Wood v. Stark Tri-County Building Trades Council*, 473 F.2d 272, 274 (6th Cir. 1973); *Deutsch v. Hewes Street Realty Corp.*, 359 F.2d 96, 100, 101 (2d Cir. 1966).

Appellant Hartigh alleged that while he was incarcerated in the jail of Metropolitan Police Force No. 8 he was beaten by police officers who broke his wrist. The complaint also alleged that appellant was imprisoned under conditions amounting to cruel and unusual punishment, and was subjected to denied the equal protection of the laws. Plaintiff below prayed for $100,000 in com-

pensatory damages and $100,000 in punitive damages. As in No. 73-1740, there was no record that these jurisdictional allegations of damages were disputed below.

The factual allegations of injury before this court are that appellant suffered a broken wrist and sustained medical bills of $24.00. In view of these very limited medical injuries, there may arise some question of the amount in controversy. However, appellant also claims the infringements of constitutional rights. Although infringement of these rights may be difficult of precise monetary evaluation, that does not make them non-justifiable under § 1331(a). *Spock v. David, supra; Wolff v. Selective Service Local Board No. 16*, 372 F.2d 817, 826 (2d Cir. 1967). This Court has accepted, for jurisdictional purposes, allegations of an amount in controversy exceeding $10,000 for twelve to fourteen hours of false imprisonment without physical injury. *Sullivan v. Murphy, supra*, at n. 34. Furthermore, Hartigh sought punitive damages below, and such damages are to be included in the amount in controversy for jurisdictional purposes. *Bell v. Preferred Life Assurance Society, supra.*

Where the plaintiff has asserted a denial of constitutional rights and more than $10,000 in damages, and where the defendant has not disputed the amount in controversey, the plaintiff is entitled to at least a hearing on the factual issue of whether or not the dispute reaches the jurisdictional amount. In this case, there was no factual or legal hearing on the issue of jurisdiction; the court merely stated:

> In light of the Carter case, this will be certified to the Superior Court.[6]

With regard to the actions against the superior police officers and the District of Columbia, since plaintiffs have made sufficient allegations to meet the statutory

[6] Tr. of Status Call on February 12, 1973, at 2.

minimum for jurisdiction in the action against the officers, they are entitled to invoke the doctrine of ancillary jurisdiction against the other defendants for negligence. *Marusa v. District of Columbia*, Slip Opinion No. 72-1027, 72-1140 (D.C. Cir. August 21, 1973).

In No. 73-1740, we vacate the order of April 26, 1973, certifying the case to the Superior Court and remand the case to the District Court for further proceedings. In No. 73-1279, we vacate the order of February 9, 1973, and remand the case for further proceedings.

So ordered.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1972

[Filed Oct. 5, 1973, United States Court of Appeals
for the District of Columbia Circuit
Hugh E. Kline, Clerk]

Civil Action 875-72
No. 73-1279

DAVID LEE DEN HARTIGH,
Appellant

v.

JOHN LATIN, JR., ET AL.

Civil Action 392-71
No. 73-1740

MICHAEL H. MARSH,
Appellant

v.

WALTER W. HOLLINGSWORTH, ET AL.

Before: Bazelon, Chief Judge, and
Leventhal, Circuit Judge

ORDER

It is ORDERED by the Court sua sponte that the opinion of October 5, 1973 is amended as follows:

Page 6, line 1, delete the comma after 100 and insert in lieu thereof, a dash.

Page 6, line 8, delete the words "subjected to".

Per Curiam
For the Court

/s/ Hugh E. Kline
HUGH E. KLINE
Clerk

[Received Oct. 10, 1973, Appellate Division, Corporation Counsel's Office]

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Apr. 26, 1973, James F. Davey, Clerk]
Civil Action No. 392-71

MICHAEL H. MARSH,
Plaintiff

v.

WALTER W. HOLLINGSWORTH, ET AL.
Defendants

ORDER

Upon consideration of the motion of defendants Hollingsworth, Heane, Wilson, and the District of Columbia to certify action to Superior Court of the District of Columbia, and the memorandum of points and authorities cited in support of and in opposition thereto, and it appearing to the Court that this action will not justify a judgment in excess of Ten Thousand Dollars, exclusive of interest and costs, and upon the authority of *District of Columbia* v. *Carter*, —— U.S. —— (No. 71-564, January 10, 1973), it is, by the Court, this 26th day of April, 1973,

ORDERED: That the above-captioned cause be, and the same is, hereby certified to the Superior Court of the District of Columbia.

/s/ Barrington J. Parker
Judge

I hereby certify that a copy of the foregoing proposed Order was mailed, postage prepaid, to Richard A. Earle, Esquire, 1200 - 17th St., N.W., Washington, D. C. 20036, this 13th day of April, 1973.

/s/ Marcus P. McGraw
Assistant Corporation Counsel, D. C.
Attorney for Defendants
District Building
Washington, D. C. 20004

[Received Apr. 27, 1973, Civil Proceedings Division, Corporation Counsel's Office]

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed February 18, 1971]

Civil No. 392-71

MICHAEL H. MARSH
3310 Landover Street
Alexandria, Virginia

Plaintiff

v.

WALTER W. HOLLINGSWORTH
(Badge #2624)
Metropolitan Police Department
Washington, D. C.

JOHN DOE #1
(Badge #2444)
Metropolitan Police Department
Washington, D. C.

OFFICER HEANE
Metropolitan Police Department
Washington, D. C.

JOHN DOE #2
Metropolitan Police Department
Washington, D. C.

JOHN DOE #3
Metropolitan Police Department
Washington, D. C.

JOHN DOE #4
Metropolitan Police Department
Washington, D. C.

JOHN DOE #5
Metropolitan Police Department
Washington, D. C.

JERRY V. WILSON
Metropolitan Police Department
Washington, D. C.

and

DISTRICT OF COLUMBIA, a
municipal corporation
District Building
Washington, D. C.

Defendants

COMPLAINT FOR DAMAGES

(Assault and Battery; False Imprisonment; Deprivation of Civil Rights; Conspiracy to Deny Equal Protection of the Laws)

1. Plaintiff is a resident of the State of Massachusetts. Defendants are residents of and/or are found in the District of Columbia. This action arises under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and under the Civil Rights Acts of the United States, in particular 42 U.S.C. §§ 1983, 1985, and additionally seeks redress for the deprivation under color of the laws, regulations, customs and/or usages of the District of Columbia of rights, privileges and immunities secured to plaintiff by the Constitution and laws of the United States. The amount in controversy exceeds $10,000, exclusive of interest and costs.

2. At all times relevant to this action, defendants Heane, Walter W. Hollingsworth and John Doe #1 were employed by and acting as police officers of the Metropolitan Police Department of defendant District of Columbia; defendant John Doe #2 was likewise employed

and acting and was the immediate supervisor of defendants Hollingsworth and John Doe #1 at the time of the events alleged herein; defendant John Doe #3 was likewise employed and acting and was the immediate supervisor of defendant John Doe #2, and thereby a supervisor of defendants Hollingsworth and John Doe #1 at the time of the events alleged herein; defendant John Doe #4 was likewise employed and acting and was in direct charge of processing and booking of arrested persons at the First Precinct; defendant John Doe #5 was likewise employed and acting and was the supervisor of defendant John Doe #4; and defendant Jerry V. Wilson was likewise employed and acting and was additionally Chief of said Department and thereby the ultimate supervisor of defendants Hollingsworth, John Doe #1, Heane, John Doe #2, John Doe #3, John Doe #4, and John Doe #5 at the time of the events alleged herein. Defendant District of Columbia is a body corporate for municipal purposes.

3. At all times relevant to this action, defendants John Doe #2 and #3, Wilson, and the District of Columbia were under a duty to train, instruct, supervise and control defendants Hollingsworth, John Doe #1, and Heane in the proper performance of their duties as police officers; defendants John Doe #5, Wilson, and the District of Columbia were under a like duty with respect to defendant John Doe #4; defendants John Doe #3, Wilson, and the District of Columbia were under a like duty with respect to defendant John Doe #2; defendants Wilson and the District of Columbia were under a like duty with respect to defendants John Doe #3 and John Doe #5, and defendant District of Columbia was under a like duty with respect to defendant Wilson.

Count I

4. On or about February 19, 1970, at approximately 5 p.m., in and about Madison Hall, a George Washing-

ton University dormitory located at 22nd and H Streets, N.W., in the District of Columbia, defendants Hollingsworth and John Doe #1 (Badge #2444), acting under color of law, regulation, custom and/or usage of the District of Columbia, and in their capacities as police officers thereof, committed an assault and battery upon plaintiff.

5. At the time of such assault and battery, plaintiff was, as defendants well knew, witnessing a demonstration or assembly whose objective was to criticize or protest actions of the United States Government and/or officials thereof and to petition the United States Government and/or officials thereof for the redress of grievances, all in the exercise of rights and privileges guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by the laws thereof.

6. As a direct and proximate result of such assault and battery, in the circumstances, plaintiff was deprived of the rights and privileges alleged in paragraph 5 and was thereby put in fear that similar action would be taken if plaintiff attempted to exercise such rights in the future.

7. Defendants Hollingsworth, John Doe #1, John Doe #2, Wilson, and the District of Columbia conspired to deprive and warn plaintiff as alleged in paragraph 6, with the intent to do so.

8. Defendants John Doe #2, John Doe #3, Wilson, and the District of Columbia, and each of them, knew that the deprivation of rights alleged in paragraph 6 was about to occur, had power to prevent same and failed to prevent or aid in preventing same. Such defendants, and each of them, additionally negligently failed in their duty to properly train, instruct, supervise and control defendants Hollingsworth and John Doe #1. Defendants

John Doe #3, Wilson and the District of Columbia, and each of them, failed to train, instruct, supervise and control defendant John Doe #2; defendants Wilson and the District of Columbia failed to train, instruct, supervise and control defendant John Doe #3; and defendant District of Columbia failed to train, instruct, supervise and control defendant Wilson.

9. As a further direct and proximate result of such assault and battery and such failures to train, instruct, supervise and control, plaintiff sustained physical injury, including a head laceration and numerous bruises, and resultant nervous disorders, including colitis, pain, suffering, mental anguish and humiliation and incurred medical expenses.

Count II

10. On or about February 19, 1970, at approximately 5 p.m., in and about Madison Hall, a George Washington University dormitory located at 22nd and H Streets, N.W., in the District of Columbia, defendants Hollingsworth, John Doe #1, and Heane, acting under color of law, regulation, custom and/or usage of the District of Columbia, and in their capacity as police officers thereof, unlawfully arrested plaintiff.

11. At the time of such unlawful arrest, plaintiff was, as defendants well knew, witnessing a demonstration or assembly whose objective was to criticize or protest actions of the United States Government and/or officials thereof and to petition the United States Government and/or officials thereof for the redress of grievances, all in the exercise of rights and privileges guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by the laws thereof.

12. As a direct and proximate result of such unlawful arrest, in the circumstances, plaintiff was deprived of the rights and privileges alleged in paragraph 11 and

was warned that similar action would be taken if plaintiff attempted to exercise such rights in the future.

13. Defendants Hollingsworth, John Doe #1, Heane, John Doe #2, John Doe #3, Wilson, and the District of Columbia conspired to deprive and warn plaintiff as alleged in paragraph 12, with the intent to do so.

14. Defendants John Doe #2, John Doe #3, Wilson, and the District of Columbia, and each of them, knew that the deprivation of rights alleged in paragraph 12 was about to occur, had power to prevent same and failed to prevent or aid in preventing same. Such defendants, and each of them, additionally failed to train, instruct, supervise and control defendants Hollingsworth, John Doe #1, and Heane. Defendants John Doe #3, Wilson, and the District of Columbia, and each of them, failed to train, instruct, supervise and control defendant John Doe #2; defendants Wilson and District of Columbia failed to train, instruct, supervise and control defendant John Doe #3; and defendant District of Columbia failed to train, instruct, supervise and control defendant Wilson.

15. As a further direct and proximate result of such unlawful arrest and such failures to train, instruct, supervise and control, plaintiff sustained physical injury, pain, suffering, deprivation of freedom, mental anguish and humiliation and incurred medical expenses.

Count III

16. On or about February 19, 1970, during the afternoon and evening hours, at the First Precinct of the Metropolitan Police Department of defendant District of Columbia, defendant John Doe #4, acting under color of law, regulation, custom and or usage of the District of Columbia, and in his capacity as a police officer thereof, utilized processing and booking procedures which

needlessly and unlawfully caused plaintiff to be detained at such Precinct far in excess of the time reasonably needed to accomplish such procedures and thereby falsely imprisoned plaintiff for such excess period.

17. At the time of plaintiff's arrest which caused him to be presented to defendant John Doe #4 for processing, plaintiff was, as defendants well knew, witnessing a lawful demonstration or assembly whose objective was to criticize or protest actions of the United States Government and/or officials thereof and to petition the United States Government and/or officials thereof for the redress of grievances, and all in the exercise of rights and privileges guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and by the laws thereof.

18. As a direct and proximate result of such false imprisonment, in the circumstances, plaintiff was deprived of the rights and privileges alleged in paragraph 17 and was warned that similar action would be taken if plaintiff attempted to exercise such rights in the future.

19. Defendants John Doe #4, John Doe #5, Wilson, and the District of Columbia conspired to deprive and warn plaintiff as alleged in paragraph 18.

20. Defendants John Doe #5, Wilson, and the District of Columbia, and each of them, knew that the deprivation of rights alleged in paragraph 18 was about to occur, had power to prevent same and failed to prevent or aid in preventing same. Such defendants, and each of them, additionally failed to train, instruct, supervise and control defendant John Doe #4. Defendants Wilson and the District of Columbia, and each of them, failed to train, instruct, supervise and control defendant John Doe #5; and defendant District of Columbia failed to train, instruct, supervise and control defendant Wilson.

21. As a further direct and proximate result of such unlawful arrest and such failures to train, instruct, supervise and control, plaintiff sustained physical injury, pain, suffering, deprivation of freedom, mental anguish and humiliation and incurred medical expenses.

WHEREFORE, plaintiff demands judgment against defendants in the amount of $10,000 as compensatory damages and $10,000 as exemplary damages.

/s/ R. A. Earle
RICHARD A. EARLE
1200 Seventeenth Street, N.W.
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223-4040

Of Counsel:

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed April 13, 1973]

Civil Action No. 392-71

MICHAEL H. MARSH,

Plaintiff

v.

WALTER W. HOLLINGSWORTH, ET AL.

Defendants

MOTION TO CERTIFY ACTION TO SUPERIOR COURT

Come now the defendants Hollingsworth, Heane, Wilson, and the District of Columbia, by and through their attorneys, and move the Court to certify this action to the Superior Court of the District of Columbia pursuant to Section 11-922(b), D. C. Code, 1967 ed., Supp. V, for the following reasons:

1. The instant action is not one which can properly be brought against defendants under 42 U.S.C. §§ 1983 and 1985 as indicated by the Supreme Court of the United States in District of Columbia v. Carter, —— U.S. —— (Decided January 10, 1973).

2. It is respectfully submitted that the instant action will not justify a judgment in excess of $10,000.00.

/s/ C. Francis Murphy
C. FRANCIS MURPHY
Corporation Counsel, D. C.

/s/ John A. Earnest
JOHN A. EARNEST
Assistant Corporation Counsel,
D. C.
/s/ Marcus P. McGraw
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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed April 23, 1973]

Civil Action No. 392-71

MICHAEL H. MARSH,

Plaintiff

v.

WALTER W. HOLLINGSWORTH, ET AL.

Defendants

ANSWER IN OPPOSITION TO MOTION OF DEFENDANTS TO CERTIFY ACTION TO SUPERIOR COURT

Comes now the plaintiff, Michael H. Marsh, by and through his attorney, and opposes the motion of Defendants to Certify Action to Superior Court on the ground that, the decision in *District of Columbia* v. *Carter*, —— U.S. —— 41 U.S.L.W. 4127 (U.S. Jan. 10, 1973) notwithstanding, jurisdiction is in this Court pursuant to 28 U.S.C. § 1331(a).

/s/ R. A. Earle
RICHARD A. EARLE, ESQ.
1200 Seventeenth Street, N.W.
Washington, D. C. 20036
Telephone: 202/223-4040
Attorney for Plaintiff

Of Counsel:
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[Received Apr. 23, 1973, Civil Proceedings Division, Corporation Counsel's Office]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1040

DISTRICT OF COLUMBIA, *et al.*,

Petitioners,

v.

MICHAEL H. MARSH,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1040

DISTRICT OF COLUMBIA, *et al.*,

Petitioners,

v.

MICHAEL H. MARSH,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

1. Pendent Jurisdiction

The first of four reasons why this Court should not issue a writ of certiorari in this case is that petitioner District of Columbia has at no time challenged below, or even discussed in its briefs, the exercise of pendent jurisdiction over a claim against it. Since *District of Columbia v. Carter*, 409 U.S. 418, was decided on January 10, 1973, this litigation has

been concerned with the requirement of $10,000 in controversy for federal jurisdiction. Petitioners have not raised the $10,000 issue in their petition for writ of certiorari and thus it is not before this Court. See Sup. Ct. R. 23(1)(c). Instead, petitioners have urged this Court to review a pendent party issue which was never considered in any way by the District Court below.[1] The Court of Appeals below, without prompting by the parties, included only a single sentence in its opinion in which it mentioned pendent jurisdiction. Thus, there has never been a thorough and thoughtful ventilation of the issue in the courts below—a prerequisite to proper consideration in the Supreme Court.

Indeed, as far as respondent is aware, the District of Columbia has never previously questioned in any suit whether claims against it should be subject to the pendent jurisdiction of the United States District Court in suits against police officers filed in that court. This is understandable, for in such cases the police officers are, along with the District itself, entitled to be represented by the District of Columbia Corporation Counsel in any event. D.C. Code Ann. § 4-143a(a)[2] This underscores the fact that to split

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[1] In Moor v. County of Alameda, 411 U.S. 693 (1973), this Court found it unnecessary to decide whether a district court should have pendent jurisdiction over the county because the district court had already found it inappropriate to exercise that jurisdiction. *Moor* suggests that this Court should at least await a case which poses the issue directly, *i.e.*, in which the district court has decided to exercise its jurisdiction over a pendent party. In this case the district court has not yet considered the point, because the issue had not been raised before the filing of the petition for writ of certiorari. Hence, this case presents an even less appropriate vehicle for resolving the "pendent party" question than did *Moor*.

[2] As a matter of local law the District of Columbia municipal corporation may be held vicariously liable in *respondeat superior* for any wrongdoing of its police officers. Wade v. District of Columbia, 310 A.2d 851 (D.C. Ct. App. 1973).

this suit between two courts and two trials would simply double the cost and produce no corresponding benefit, thus making the question presented an academic exercise having no practical benefit to petitioners.

Second, this case will not resolve the broader national issues of federalism posed by *Moor v. County of Alameda*, 411 U.S. 693, 710-15 (1973). Unlike *Moor* or any other suit against state police officers, political subdivisions of states, or states themselves, this case involves no question of federal-state relations and no issue of the role of federal courts in interpreting or enforcing the possibly unclear laws of other sovereign political units. Here, petitioners have merely asked this Court for an advisory opinion, which might have impact only in the District of Columbia, as to whether the claim against the District of Columbia should be heard in the federal court, where this action is pending, or in the District of Columbia Superior Court, the local court also established by Congress and located only four blocks away.

Third, the Court of Appeals decision below does not conflict with this Court's opinions in *Moor* and *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966), or with the overwhelming majority of lower courts that have considered the point. *Moor* noted that only the Ninth Circuit had fallen out of line with the decisions of the other circuits which held that the federal courts may exercise jurisdiction over "pendent parties," following the guidance of *Gibbs*. *Moor* provided the Ninth Circuit with an opportunity to correct its position by overruling its abberant decision, *Hymer v. Chai*, 407 F.2d 136 (9th Cir. 1969). Since *Moor* was decided in May 1973, the Ninth Circuit has not yet had a chance to reevaluate its position in the light of *Moor*'s criticism, although at least one district court in the Ninth Circuit has already refused to follow the shaky precedent of *Hymer*. See *Gaison v. Scott*, 59 F.R.D. 347 (D.

Hawaii 1973). Certainly, there is no need to grant the present petition merely to speak again to the Ninth Circuit, because "it seems likely that the conflict may be resolved as a result of future cases in the [Ninth Circuit Court] of Appeals . . . ." Mr. Justice Harlan, *Some Aspects of the Judicial Process in the Supreme Court of the United States,* 33 Australian L.J. 108, 112 (1959).

Finally, there is no reason to consider the petitioners' contentions as to pendent party jurisdiction, because the complaint in this case (appendix c, petition for cert.) establishes the predicates for diversity jurisdiction under 28 U.S.C. § 1332(a) by alleging that respondent is a resident of the State of Massachusetts. Petitioners did not question the presence of diversity jurisdiction in the District Court, did not object after the respondent brought the diversity jurisdiction to the attention of the Court of Appeals below, and have not raised any such issue in their petition. Accordingly, with such an unchallenged independent basis for federal diversity jurisdiction and with no stay having been requested from this Court or in the courts below, it would be singularly inappropriate for this Court to impede the orderly progress of the present case through discovery towards trial in order to entertain petitioners' academic arguments which have little practical consequence at this stage in the litigation.

2. Ordinary Federal Question Jurisdiction

Petitioners also ask this Court to consider whether federal question jurisdiction under 28 U.S.C. § 1331(a) is narrower in the United States District Court for the District of Columbia than it is in any other district court. This request does not merit the Court's attention either.

Respondent's complaint duly alleged facts showing diversity jurisdiction under 28 U.S.C. § 1332(a) (appendix c, peti-

tion for cert. at 13a), which petitioners have not contested, and therefore even a holding that federal question jurisdiction does not exist would not affect the case.

In any case, respondent plainly and correctly invoked the District Court's federal question jurisdiction. Although his invocation of 42 U.S.C. § 1983 is no longer valid, *District of Columbia v. Carter, supra,* he alleged also that the action arose under various amendments to the Constitution of the United States and that he was deprived of his liberty, illegally seized, and deprived of his First Amendment rights to watch a public demonstration. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971); *Bell v. Hood,* 327 U.S. 678 (1945). In *Carter* itself, this Court specifically observed that the inapplicability of 42 U.S.C. § 1983 did not foreclose a suit in federal district court against a District of Columbia police officer based on alleged deprivation of constitutional rights. 409 U.S. at 432-33.[3]

Section 1331(a) is clear on its face; it confers federal question jurisdiction on "the district courts." It does not make any exception for the District of Columbia. Nor did

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[3] Petitioners gain nothing from their characterization of this case as a "purely local civil rights matter" or from their assertion that the police officers were "acting in a purely local capacity." Whether respondent's claim states a cause of action under the Constitution is not identified as a question presented for review, nor is it fairly comprised in either of the questions that are presented. Sup. Ct. R. 23(1)(c). In any case, since state officers may be sued under 42 U.S.C. § 1983 and federal officers may be sued under the *Bell-Bivens* doctrine, we think it would border on the frivolous to suggest that District of Columbia police officers are the only policemen in the entire United States who cannot be sued in a federal court for violating the constitutional rights of citizens, and we do not take petitioners to be making such a suggestion.

Congress, when it recently spoke to that precise issue. In the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. 91-358, 84 Stat. 473 (the "Reorganization Act"), Congress substantially reorganized the courts of the District of Columbia and transferred to the local court system, in stages, most of the non-federal, article I business that had previously been handled by the District Court. See *Palmore v. United States*, 411 U.S. 389, 392 n. 2 (1973); S. Rep. No. 91-405, 91st Cong., 1st Sess. 19 (1969); H.R. Rep. No. 91-907, 91st Cong. 2d Sess. 34 (1970). What was to remain in the District Court was jurisdiction over certain enumerated items plus "its jurisdiction as a United States district court," D.C. Code §§ 11-501, 11-502;[4] Reorganization Act, § 111, 84 Stat. 476-77 (1970). Moreover, actions begun in the local court system which are removable under chapter 89 of title 28, U.S. Code, are specifically removable to the United States District Court for the District of Columbia, D.C. Code § 11-503, and a new provision (§ 1451) was added to chapter 89 expressly making the local court of the District a "state court" for removal purposes. Reorganization Act, §§ 111, 172(d)(1), 84 Stat. 478, 591.

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[4] These provisions are consistent with earlier editions of the District of Columbia Code which affirmed the federal question jurisdiction of the District Court for the District of Columbia. For example, the Act of March 3, 1901, § 84, 31 Stat. 1189, provided that the Supreme Court of the District of Columbia (the forerunner to the present Federal District Court and the Superior Court) "shall have and exercise the same powers and jurisdiction as the other district courts of the United States." *Cf.* O'Donoghue v. United States, 289 U.S. 516, 548 (1933); Claiborne-Annapolis Ferry v. United States, 285 U.S. 382 (1932); Federal Trade Comm'n v. Klesner, 274 U.S. 145 (1927).

In other words, Congress specifically addressed the jurisdiction of the District Court (and the U.S. Court of Appeals) in the District of Columbia and expressly preserved it,

> "confin[ing] the work of those courts to that which, for the most part, they were designed to do, namely, to try cases arising under the Constitution and the nationally applicable laws of Congress." *Palmore v. United States, supra,* 411 U.S. at 409.

The legislative history on the point is also clear: Senator Hruska, a co-sponsor of the bill, in presenting the Summary of Proposed District of Columbia Reorganization Act of 1969 and in introducing the legislation to the Senate, clearly stated that the Reorganization Act "preserves the federal jurisdiction of the District Court." 115 Cong. Rec. 19266 (1969); see S. Rep. No. 91-405, *supra,* at 5; H.R. Rep. No. 91-907, *supra,* at 34; 116 Cong. Rec. 24720 (1970).

Apparently, as this Court has stated previously in a different context, petitioners "recognize there is nothing in the wording or legislative history of section 1331 or in the decisions of this Court, which would indicate that there is any basis for the interpretation they would give that section." *Powell v. McCormack,* 395 U.S. 486, 516 (1969). They rely, therefore, on the legislative history of another statute, the Ku Klux Klan Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983, to overcome that handicap. There are obvious limitations on the use of the legislative history of one statute to interpret another statute when they are "deriv[ed] from different constitutional sources." *District of Columbia v. Carter, supra,* 409 U.S. at 423, quoting from *Monroe v. Pape,* 365 U.S. 167, 205-06 (1961). These difficulties are accentuated here because the declared source of the Ku Klux Klan Act is the Fourteenth Amendment, which is applicable only to the states, not to the District of Columbia.

The constitutional foundation for section 1331(a) is article III, which of course applies as much in the District of Columbia as it does elsewhere.

Thus, the recent enactment of the Reorganization Act, plus recent and earlier decisions of this Court regarding the status of the courts in the District of Columbia, make it plain that the second question presented by the petition for certiorari does not warrant plenary consideration by this Court on the mere chance that the legislative history of the Ku Klux Klan Act, enacted over one hundred years ago, might conceivably suggest a different result.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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